

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

**IN RE: VALSARTAN, LOSARTAN,
AND IRBESARTAN PRODUCTS
LIABILITY LITIGATION**

This Document Relates to All Actions

MDL No. 2875

Honorable Robert B. Kugler,
District Court Judge

Honorable Joel Schneider,
Magistrate Judge

**ORDER GRANTING
MANUFACTURER
DEFENDANTS' MOTION TO
DISMISS IN PART**

THIS MATTER having come before the Court upon Manufacturer Defendants' Motion to Dismiss, joined by FDA Liaison Defendants, on notice to Liaison Counsel for Plaintiffs, and the Court having reviewed the submissions of the parties, any replies thereto, and having heard argument, and for good cause appearing:

It is, on this _____ day of _____ 2020,

ORDERED AND ADJUDGED that Manufacturer Defendants' Motion to Dismiss the Complaints is **GRANTED IN PART**.

IT IS FURTHER ORDERED, the Complaints are dismissed with respect to the Manufacturer Defendants and FDA Liaison Defendants as follows:

With respect to Defendants named in the Complaints:

- a) ☐ All Defendants in the ELMC and MMMC to whom Plaintiffs have failed to trace their injuries are **DISMISSED**, *see* Charts at 10 (ELMC) & 11 (MMMC).
- b) ☐ As to all Defendants in the ELMC, MMMC, and PIMC, all claims under the laws of States not represented by any Plaintiff are **DISMISSED**, *see* Charts at 12 (ELMC) & 13 (MMMC).
- c) ☐ Defendants Hetero USA, Inc. and Princeton Pharmaceutical Inc. are **DISMISSED** as to all claims in the ELMC, MMMC, and PIMC.
- d) Defendant Aurobindo Pharma USA, Inc. is **DISMISSED** as to the following claims in the ELMC: ☐ Counts XV and XVI for Negligence and ☐ Counts XVII and XVIII for Negligence *Per Se*; in the MMMC, ☐ Count IV for Products Liability – Manufacturing Defect; and in the PIMC: ☐ Count I for Strict Liability – Manufacturing Defect and ☐ Count III for Strict Liability Design Defect.

With respect to specific counts of the ELMC:

- a) Counts I and II for Breach of Express Warranties are **DISMISSED** on the following grounds: ☐ preemption or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 8 (preemption) and 37–38, 39–41, 42, and 46–48 (express warranty).
- b) Counts III and IV for Breach of Implied Warranties of Merchantability and Fitness are **DISMISSED** on the following grounds: ☐ primary jurisdiction, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption) and 35–36 and 43–45 (implied warranty).
- c) Counts V and VI under the Magnuson-Moss Warranty Act are **DISMISSED** on the following grounds: ☐ subsumption by product liability statutes or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption).
- d) Counts VII and VIII for Fraud (Affirmative Misrepresentation, Omission, and Concealment) are **DISMISSED** on the following grounds: ☐ preemption, ☐ subsumption by product liability statutes, or ☐ failure to state a

claim under Rule 12(b)(6), *see* Charts at 8 (preemption), 16–19 (subsumption), and 20–21 and 22 (fraud).

e) Counts IX and X for Negligent Misrepresentation and Omission are **DISMISSED** on the following grounds: ☐ preemption or ☐ subsumption by product liability statutes, *see* Charts at 8 (preemption) and 16–19 (subsumption).

f) Counts XI and XII for Violation of State Consumer Protection laws are **DISMISSED** on the following grounds: ☐ preemption or ☐ subsumption by product liability statutes, *see* Charts at 8 (preemption) and 16–19 (subsumption).

g) Counts XIII and XIV for Unjust Enrichment are **DISMISSED** on the following grounds: ☐ subsumption by product liability statutes or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption) and 49, 50–51, and 52–56 (unjust enrichment).

h) Counts XV and XVI for Negligence are **DISMISSED** on the following grounds: ☐ primary jurisdiction, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption) and 32–34 (negligence).

i) Counts XVII and XVIII for Negligence *Per Se* are **DISMISSED** on the following grounds: ☐ preemption, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 8 (preemption), 16–19 (subsumption), and 29–30 and 31 (negligence *per se*).

With respect to specific claims of the MMMC:

a) Count I for Negligence is **DISMISSED** on the following grounds: ☐ primary jurisdiction, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption) and 32–34 (negligence).

b) Count II for Negligence *Per Se* is **DISMISSED** on the following grounds: ☐ preemption, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 9 (preemption), 16–19 (subsumption), and 29–30 and 31 (negligence *per se*).

c) Count III for Medical Monitoring is **DISMISSED** on the following grounds: ☐ subsumption by product liability statutes or ☐ failure to state a claim

under Rule 12(b)(6), *see* Charts at 16–19 (subsumption) and 57–58, 59, and 60 (medical monitoring).

d) Count IV for Products Liability–Manufacturing Defect is **DISMISSED** on the following grounds: ☐ primary jurisdiction or ☐ subsumption by product liability statutes, *see* Charts at 16–19 (subsumption).

e) Count V for Failure to Warn is **DISMISSED** on the following grounds: ☐ preemption, ☐ subsumption by product liability statutes, ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 9 (preemption), 16–19 (subsumption), & 28 (failure-to-warn).

f) Count VI for Violation of the Magnuson-Moss Warranty Act is **DISMISSED** on the following grounds: ☐ subsumption by product liability statutes or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption).

g) Count VII for Breach of Implied Warranty of Merchantability is **DISMISSED** on the following grounds: ☐ primary jurisdiction, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption) and 35–36 and 43–45 (implied warranty).

h) Count VIII for Breach of Express Warranty is **DISMISSED** on the following grounds: ☐ preemption or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 9 (preemption) and 37–38, 39–41, 42, and 46–48 (express warranty).

i) Count IX for Fraud/Fraudulent Concealment is **DISMISSED** on the following grounds: ☐ preemption, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 9 (preemption), 16–19 (subsumption), and 20–21 and 22 (fraud).

With respect to specific claims of the PIMC:

a) Count I for Strict Liability – Manufacturing Defect is **DISMISSED** on the following grounds: ☐ primary jurisdiction or ☐ subsumption by product liability statutes, *see* Charts at 16–19 (subsumption).

b) Count II for Strict Liability – Failure to Warn is **DISMISSED** on the following grounds: ☐ primary jurisdiction, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption) and 28 (failure-to-warn).

c) Count III for Strict Liability – Design Defect is **DISMISSED** on the following grounds: ☐ preemption, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 7 (preemption) and 23–27 (design defect).

d) Count IV for Negligence is **DISMISSED** on the following grounds: ☐ primary jurisdiction, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption) and 32–34 (negligence).

e) Count V for Negligence *Per Se* is **DISMISSED** on the following grounds: ☐ preemption, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 7 (preemption), 16–19 (subsumption), and 29–30 and 31 (negligence *per se*).

f) Count VI for Breach of Express Warranty is **DISMISSED** on the following grounds: ☐ preemption or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 7 (preemption) and 37–38, 39–41, 42, and 46–48 (express warranty).

g) Count VII for Breach of Implied Warranty is **DISMISSED** on the following grounds: ☐ primary jurisdiction, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption) and 35–36 and 43–45 (implied warranty).

h) Count VIII for Fraud is **DISMISSED** on the following grounds: ☐ preemption, ☐ subsumption by product liability statutes, or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 7 (preemption), 16–19 (subsumption) and 20–21 and 22 (fraud).

i) Count IX for Negligent Misrepresentation is **DISMISSED** on the following grounds: ☐ preemption or ☐ subsumption by product liability statutes *see* Charts at 7 (preemption) and 16–19 (subsumption).

j) Count X for Breach of Consumer Protection Statutes is **DISMISSED** on the following grounds: ☐ preemption or ☐ subsumption by product liability statutes, *see* Charts at 7 (preemption) and 16–19 (subsumption).

k) Count XI for Wrongful Death is **DISMISSED** on the following grounds: ☐ subsumption by product liability statutes or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption).

l) Count XII for Survival Actions is **DISMISSED** on the following grounds: ☐ subsumption by product liability statutes or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption).

m) Count XIII for Loss of Consortium is **DISMISSED** on the following grounds: ☐ subsumption by product liability statutes or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption).

n) Count XIV for Punitive Damages is **DISMISSED** on the following grounds: ☐ subsumption by product liability statutes or ☐ failure to state a claim under Rule 12(b)(6), *see* Charts at 16–19 (subsumption) and 61–67 (punitive damages).

IT IS FURTHER ORDERED that a copy of this Order shall be served on all counsel of record within ____ days of Defendants’ Liaison Counsel’s receipt of this Order.

Dated: _____

Hon. Robert B. Kugler, U.S.D.J.

Motion Opposed _____
Motion Unopposed _____